IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO. 13 OF 2007

1. Suresh Gupta
Shah Sadan 16 Shviaji Park
Mumbai 400028

2. Chintaman Gardre
9 Oak Shade Society Deonar Baug
Deonar Mumbai 400088

3. Centre for Enquiry into Health and
Allied Themes (CEHAT)
Survey No.2804 & 2805
Aram Society Road
Vakola Santacruz(E)
Mumbai 400055 **..Petitioners**

Versus

1. The State of Maharashtra
through the Secretary Department
of Health Mantralaya Mumbai 32

2. Director General Health Services

St George Hospital Compound

Mumbai 400001 ..Respondents

Mr. Mihir Desai for the petitioners.

Mr. V.M. Phal AGP for respondents.

CORAM: SWATANTER KUMAR, C.J., &
S.C.DHARMADHIKARI, J.

Judgment reservated on April 05, 2007.
Judgment delivered on April 19, 2007

JUDGMENT(PER SWATANTER KUMAR,C.J.):

1 The Indian Parliament passed the Transplantation of Human Organs Act, 1994 to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for prevention of commercial dealings in human organs. After the said enactment vide notification dated 23.2.1995, the Act was implemented in the State of Maharashtra.

2. After the said enactment vide notification dated 23.2.1995, the Act was implemented in the State of Maharashtra. The Government of Maharashtra appointed the Director of Health Services as the appropriate

authority vide notification dated 23.3.1995. The petitioner who claims to be a life member of the Bank Association of India and petitioner no.2, who is an honorary member of the multi organ harvesting Aid Network Mohan Foundation, a non-governmental organization based in Chennai have approached this court to pray for a relief claiming issuance of a writ of Mandamus directing the respondents to constitute the committees and issue guidelines under the provisions of the Act and also that the hospitals which do not have an organ transplantation facility should be granted registration under the Act, diagnosis and first brain death declaration to be made mandatory and have made various other suggestions and which according to them would help in achieving the various objects as well as would serve a larger public interest. There is no doubt that certain useful and valuable suggestions have been made in the petition. Various facets and methodologies involved in acquiring and transplantation of human organs have been dealt with by the petitioners, some of them can be referred to as under:

> "a) Those hospitals which do not have organ transplant facilities but have organ retrieval facility should be granted registration under the Act to that extent;
>
> b) Diagnosis and first brain death declaration on time should be made mandatory for the local team of doctors;
>
> c) It also must be mandatory for the authorised committees to be available round the clock on call to visit the donor hospital and certify the brain death.;
>
> d) Protocols for post death counselling and organ retrieval should

> also be mandatory in all cases within hospitals possessing trauma or intensive care wards, thereby providing the family with the timely option of cadaver organ donation;
>
> e)The counsellors should counsel for multi organ donations and provide correct information about all the organs which can be donated;
>
> f) The transplant centres should share the organs with other hospitals, cities and states if they do not have their own transplant programme for that particular organ, Records of such sharing must be maintained;
>
> g) Records of brain deaths, counselling for multi organ donation transplants, transplants, list of patients awaiting organ transplants, etc should be in the public domain;
>
> h) The selection of recipients of organs must be primarily on the basis of medical (e.g. Biological age, immune status, concomitant or secondary diseases) and transparent criteria. Other criteria such as sex, marital status, economic situation, degree of personal acquittance, anti social behaviour or social failure should not be used while deciding the recipients".

3. We have intentionally not issued notice in the present writ petition as there is no urgency. The matters raised in the present writ petition can be examined by the competent and technical bodies constituted under the Act and in the hierarchy of Government. The pre-requisites of a writ of Mandamus is a notice to the other side requiring them to discharge their duties as contemplated under the provisions of the Act. It is a settled principle of law that a public authority can invoke the extraordinary writ jurisdiction of the Court, it is obligatory upon such an authority to serve a demand upon the concerned authority. This is the rule.

4. The suggestions made in the writ petition may require

consideration by the competent authorities. The Court is not the appropriate forum and has no technical know-how to examine the need for introduction, direction or the systems suggested in the writ petition. The expert bodies have been consiituted under the provisions of the Act and such expert bodies are expected to perform their duties. It is a settled principle of law that the authorities, which are entrusted with the responsibility of maintaining the methods and performance of duties as contemplated under the provisions of the Act, should be left free to make such recommendations or constitute such Committees as may be necessary for achieving the object. It may not be permissible nor possible for the Courts to sit as appellate expert bodies and venture upon issuing a direction for incorporation of certain measures and guidelines, which are required to be followed by the expert bodies. These principles have been often stated by the Supreme Court in its different judgments and useful reference can be made to the observations of the Supreme Court in the case of **Dalpat Abasaheb Solunke Etc. Vs. B.S. Mahajan Etc. JT 1989 (4) SC 487** where even in the case of selection of a candidate to a post by expert bodies, the Court held as under:-

> "Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interferred with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved malafides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant Statutes. The Committee

> consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

5. In the present case, one of the arguments addressed before us was that the rules and guidelines, as in force, do not permit the hospitals to operate, which are competent to receive and maintain human organs, but are not in a position to transplant. Such Hospitals are not being registered by the authorities and this is causing a serious problem to the patients needing transplantation as a result of inordinate delay as well as availability of very few hospitals. This argument, in fact, is a submission made on behalf of the hospitals but none of such hospitals is a party in the present writ petition. As such even this question is purely academic in the present writ petition. If any Hospital has been denied registration, it is open to such hospitals to question such decision of the competent authority within the purview and scope of the provisions of the Act.

6. Section 14 of the Act governs registration of hospitals engaged in removal, storage and transplantation of human organs. The registration under the said provisions is mandatory. The pre-requisite registration and the process to be followed, has been spelt out in the said provisions and even an appellate

authority has been constituted to entertain the grievances to whom the registration might have been denied by the authorisation committee. To that extent it is a self contained Act and does not invite judicial intervention by the Court at this juncture. The provisions of the Act are preventive, regulatory and punitive. No effort has been made by the petitioner to invoke the jurisdiction of the specified authority and in any case the cause of action would be individualistic and cannot be brought into the ambit of public interest litigation.

7. In the case of Dalpat Abasaheb Salunke (supra) further more the Supreme Court has clearly and repeatedly held that a private individual or individuals cannot sponsor the public interest litigation to cover up or claim reliefs which are primarily private interest.

8. Having given our considered thought to the facts and circumstances of the case, we have no hesitation in holding that this public interest litigation cannot be entertained by the court on its merits. However, while disposing of this petition, we grant

liberty to the petitioners to approach the competent authority, including the Government, and submit to them the suggestions made by them in this petition. We had expressed a pious hope that the authorities concerned would consider the suggestions in conformity with their statutory obligations.

With the above observations we dispose of this petition, leaving the parties to bear their own costs.

CHIEF JUSTICE

S.C.DHARMADHIKARI, J.